IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14962 of 2004

Between:

Mohd.Naseeruddin, s/o Bashiruddin, aged 61 years,

Occ: Retired employee, R/o 23-2-628, Shalibanda Road, Hyderabad.

..... PETITIONER

AND

1. The Acharya N.G.Ranga Agriculture University,
rep., by its Registrar, Rajendranagar, Rangareddy District.
2. The Radio Tracer, Agriculture Chemist, Agriculture
Research Institute, Acharya N.G.Ranga Agriculture
University, Rajendranagar, Rangareddy District.

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a direction, writ or order, one in the nature of mandamus;- a) declaring the action of the respondents herein in rejecting the petitioner's claim for payment of arrears of pay for the period from 13-01-1999 to 25-8-2000 for which period, the petitioner herein was met to wait for posting and rejecting the same through proceedings dated 30-9-2003 bearing Memo No.25891/Ser.V(A2)/2000, passed by the respondent No.1 herein, as arbitrary, illegal and the same may be set aside b) directing the respondents to pay the arrears of salary to the petitioner for the period from 13-1-1999 to 25-8-2000 forthwith in the interest of justice; c) granting all consequential benefits; d) awarding costs.

Counsel for the Petitioner: MR.M.RAMA RAO

Counsel for the Respondents : MR.B.SIVA REDDY

The Court at the stage of admission made the following :

THE HONOURABLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.14962 of 2004

ORDER:

The petitioner filed this writ petition questioning the proceedings, dated 30.09.2003, passed by the 1st respondent rejecting the claim of the petitioner for payment of arrears of pay for the period from 13.01.1999 to 25.08.2000, for which period the petitioner had to wait for posting.

The brief facts, that are necessary for disposal of the writ petition, are as follows:

The petitioner was appointed in the A.P. Animal Husbandry Department as a Lab Assistant in the year 1966 and after formation of the Acharya N.G. Ranga Agricultural University (for short "University), the said Department was merged in the University. The services of the petitioner was transferred to the University. During the year 1997-98, the petitioner suffered from heart ailment, and therefore, he applied for leave. The petitioner, when he was working in the office of the second respondent-Radio Tracer, Agriculture Chemist, Agriculture Research Institute, Rajendranagar, Hyderabad, applied for leave from May, 1998 and sought for extension of leave on medical grounds and the petitioner reported for duty on 13.01.1999 and submitted his joining report to the second respondent along with the medical certificate for the period from 12.06.1998 to 12.01.1999 issued by the Civil Assistant Surgeon, Osmania General Hospital, Hyderabad, duly signed by the R.M.O. But the second respondent did not permit the petitioner to join the duty and reported to the first respondent-Registrar of the University that he would not permit the petitioner to join the

duty on the ground that disciplinary action had to be taken against the petitioner for his irregular attendance and unauthorized absence. The petitioner was orally informed to approach the office of the first respondent for posting orders. Thereafter, the petitioner approached the first respondent, but no direction was given by the first respondent permitting him to join duty, therefore, the petitioner submitted a representation on 03.07.2000, even then he was not permitted to join duty. However, the petitioner was given posting order by the Associate Director of Research, Regional Agriculture Research Station, Palem, Mahabubnagar District and accordingly, he joined duty at the Agricultural Research Station, Amberpet, Hyderabad on 26.08.2000 and retired from service on 31.08.2000. The petitioner also states that the respondents are not paying the arrears of salary for the period from 13.01.1999 to 25.08.2000, for which period he was kept waiting for posting orders. Hence, this writ petition.

The respondents filed counter affidavit stating that the petitioner was irregular in attending the office and once he was removed from the service. Again from 12.06.1998 the petitioner absented himself to the duty and reported before the second respondent on 13-01-1999 to join duty along with a medical certificate, but the second respondent did not permit him to join duty and advised him to approach the first respondent for posting, in view of his unauthorized absence. But, the petitioner did not approach the first respondent. After a lapse of 18 months, the petitioner approached the first respondent on 03.07.2000 and requested to issue posting orders stating that only two months service was left for his retirement. Considering his representation and in view of his ensuing superannuation, the first respondent issued posting orders on 27.08.2000 permitting him to join duty. Thus, taking a lenient view, the unauthorized absence of the petitioner from the duty, including the period from 12.06.1998 to

26.08.2000, was regularized by sanctioning leave to the extent of his eligibility and the remaining period was treated as Earned Leave. The request of the petitioner to treat the period from 13.01.1999 to 25.08.2000 as 'compulsory waiting for postings' was negatived by the impugned proceedings as the petitioner did not approach the first respondent till 03.07.2000. Therefore, prayed for dismissal of the writ petition.

In the reply affidavit, it is stated that the petitioner was kept waiting for posting from 13.01.1999 to 25.08.2000, therefore, for the said period he is entitled to the salary. The allegation that though the petitioner was directed to report before the first respondent, he failed to do so, is false and as per the letter of the second respondent, dated 13.01.1999, there was no such direction. It is further stated that as per the said letter, the second respondent only sought for clarification from the first respondent. As the second respondent, who is the competent person to permit the petitioner to join duty, did not permit him to join duty, he approached the first respondent for posting orders. At no point of time, neither the respondents nor the Associate Director Research had pointed out that the petitioner did not approach the officers for posting orders. Hence, the petitioner prays to allow the writ petition.

Learned counsel appearing for the petitioner contended that the second respondent, who is the competent authority to permit the petitioner to join duty, did not allow him to do so, but on the other hand, he sought clarification from the first respondent. Therefore, the petitioner had to wait compulsorily for posting till the first respondent issued posting orders on 27.08.2000. Therefore, the period from 13.01.1998 to 26.08.2000 has to be treated as 'compulsory waiting for posting', and therefore, the petitioner is entitled to the salary for the

said period.

On the other hand, learned standing counsel for the University contended that as the petitioner was in the habit of absenting himself to the duties without prior sanction of leave and that once he was removed from the service for his unauthorized absence from 12.06.1998 onwards, the second respondent did not permit him to join duty and advised him to approach the first respondent for posting orders, but the petitioner did not approach the first respondent and therefore, the said period cannot be treated as 'Compulsory waiting for postings', and therefore, the writ petition is devoid of merits and is liable to be dismissed.

It is not in dispute that the petitioner himself absented from the duty from 12.06.1998 onwards and reported to joint duty on 13.01.1999 before the second respondent along with a medical certificate. The second respondent did not permit the petitioner to join duty and reported the matter to the first respondent *vide* proceedings, dated 13.01.1999, for taking further action. As seen from the contents of the affidavit filed in support of the writ petition, it is obvious that without obtaining prior permission, the petitioner absented himself from the duties from 13.01.1999 to 25.08.2000. It is the specific case of the respondents that the petitioner absented himself without prior sanction of leave from 12.6.1998 and reported for the duty on 13.1.1999, but the same was not accepted by the second respondent. Therefore, the second respondent advised the petitioner to approach the first respondent for posting orders. But, the learned counsel for the petitioner seriously disputed the said fact. As seen from the proceedings, dated 30.9.2003, the petitioner was absent from the duty in the month of March 1998, and also absent in the entire month of May, 1998.

Therefore, explanation was called for, but the petitioner did not give any reply to the office memos. Thereafter, on 13.01.1999, when the petitioner reported to duty, the second respondent did not permit him to join duty as he was unauthorisedly absent from the duty and sought necessary instructions from the first respondent by proceedings, dated 13.1.1999. When the petitioner submitted his intention to join duty on 13.01.1999, an endorsement was made by the second respondent to the effect that "please obtain permission from the University due to long gap of absence without permission". Therefore, it is the duty and responsibility of the petitioner to obtain permission from the University, but he did not care to approach the first respondent. The petitioner contended that he approached the Registrar's office for posting orders orally. The said contention cannot be accepted in view of the endorsement made by the second respondent that the petitioner should obtain permission from the University. Therefore, under no stretch of imagination, it can be said that the petitioner had to wait compulsorily for posting orders after returning from the leave. As per Rule 9 (13) of the Fundamental Rules, when a Government Servant has to compulsorily wait for posting orders after his return from leave, such period of waiting should be treated as on duty. During such period he will be entitled to pay according to Rule 20 of the Fundamental Rules. The said Rule has no application, at all, to the facts of this case, in view of the fact that the petitioner has not returned after expiry of the leave granted. The petitioner himself unauthorizedly absented from the duty and requested the second respondent to permit him to join duty on 13.01.1999. The second respondent did not permit him to join duty and advised the petitioner to obtain permission from the University, but the petitioner did not obtain any such permission from the first respondent. Thereafter, for the first time the petitioner gave a representation, dated 03.07.2000, and requested to issue posting orders stating that he has got only two months time for his superannuation. Considering the

said representation taking a lenient view, the petitioner was permitted to join duty on 27.8.2000 and the unauthorized absence of the petitioner from duty including the period from 12.06.1998 to 25.8.2000 has been regularized by sanctioning leave to the extent of his eligibility and treating the remaining period as extraordinary leave. The petitioner was sanctioned all the pensionary benefits in pursuance of the proceedings, dated 30.09.2003. As seen from the proceedings, the second respondent directed the petitioner to appear before the first respondent for posting orders, but he disappeared. Therefore, the period from 13.01.1999 to 25.08.2000 cannot be treated as compulsory wait for posting. As seen from the impugned proceedings, the conduct of the petitioner is deplorable even from the date of joining. The petitioner was in the habit of absenting himself from the duty without prior sanction of leave. The impugned proceedings do indicate about the period of unauthorized absence of the petitioner right from the year 1969 to 1974 and in the year 1975 he was removed from service. Again, the petitioner was reinstated into service with effect from 23.12.1982. Again from January 1998 onwards, the petitioner started absenting from the duty unauthorizedly. In the facts and circumstances of the case, it is not a fit case of compulsory wait for the posting orders, but it is a clear case of wilful absence of the petitioner from duty and also not reporting to the duty before the first respondent. Therefore, the writ petition is devoid of merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed without any order as to costs.

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K.C. BHANU, J.

Date:03-02-2005.

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To

1. The Registrar, Acharya N.G.Ranga Agriculture University, Rajendranagar, Rangareddy District.

2. The Radio Tracer, Agriculture Chemist, Agriculture Research Institute, Acharya N.G.Ranga Agriculture University, Rajendranagar, Rangareddy District.

3. Two C.D. Copies.